

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

THERESA A. POWELL,)	
)	
Plaintiff,)	
vs.)	NO. CIV-04-905-HE
)	
JO ANNE B. BARNHART,)	
Commissioner of the Social Security,)	
Administration,)	
)	
Defendant.)	

ORDER

Plaintiff Theresa A. Powell instituted this action pursuant to 42 U.S.C. §405(g), seeking judicial review of the defendant Commissioner's final decision denying her application for disability insurance benefits. Consistent with 28 U.S.C. § 636(b)(1)(B) and (C), the case was referred to Magistrate Judge Valerie K. Couch, who issued her Report and Recommendation recommending that the Commissioner's decision be affirmed.

The Administrative Law Judge ("ALJ") found that, while the plaintiff had a severe impairment, she was not disabled during the relevant period because she retained the residual functional capacity ("RFC") to perform her past relevant work as a clerk typist and social worker in a state agency, classified as semi-skilled, sedentary work. The Appeals Council denied the plaintiff's request for review, after considering additional evidence¹ she submitted for consideration, making the ALJ's decision the final decision of the Commissioner.

The plaintiff objects to the Report and Recommendation, asserting essentially the


¹The magistrate judge confined her review of the new evidence to a Cardiac Residual Functional Capacity Questionnaire ("Cardiac RFC") prepared by Dr. Tanna Leibold because that was the only additional evidence the plaintiff discussed in her claim of error.

same arguments presented to the magistrate judge. She contends the ALJ erred in his credibility analysis and that the Appeals Council made a “decision” when it denied the request for review and, therefore, because it considered the new evidence, erred when it failed to discuss the Cardiac RFC and to apply the treating physician rule.² Because of the latter mistake, the plaintiff asserts the case must be remanded so the ALJ can consider the treating physician’s RFC opinion.

The court has reviewed the record and given the plaintiff’s objections de novo review. The court concurs with the magistrate judge that the ALJ properly assessed the claimant’s credibility and that the ALJ’s decision is supported by substantial evidence based on the record as a whole, including the additional evidence considered by the Appeals Council. The court also agrees with her analysis and conclusions that the Appeals Council did not have to discuss the new evidence and did not err by failing to apply the treating physician rule.

Accordingly, the court adopts Magistrate Judge Couch’s Report and Recommendation and **AFFIRMS** the Commissioner’s decision.

IT IS SO ORDERED this 13th day of September, 2005.



JOE HEATON
UNITED STATES DISTRICT JUDGE

²Although the Commissioner challenged Dr. Leibold’s qualification as a treating physician, the magistrate found it unnecessary to address that issue. See Report and Recommendation, p. 12 n.4.